

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
AUGUST 18, 2008**

Minutes are not final until reviewed and approved by the Board. Review and approval of minutes generally takes place at the next regularly scheduled meeting of the Board.

ATTENDANCE

Keith Thibault, Charles Beauregard, Sr.
Alternates Bryan Rudgers, Dierdre Geer
Town Planner Sara Carbonneau also was present.

Vice Chairman Thibault called the meeting to order at 7:00 p.m. and read the agenda for the meeting.

Thibault explained to the applicants that the Board prefers to seat five members, because an application requires three affirmative votes to prevail. With only four members present, applicants have the option of requesting a continuation to the next regular meeting, on September 15.

The Board addressed the following items.

MINUTES

Motion by Rudgers to approve the minutes of July 21, 2008, as written. Second by Geer. Rudgers, Geer, Thibault in favor; Beauregard abstained. Minutes approved.

1. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION

Applicant: Ken's Tractor & Truck Sales

Property owner: Scott MacPhail and Jay MacPhail

Property location: 679 West Swanzey Road Tax Map 73, Lot 13

Zoning District(s): Business

Request: special exception pursuant to Section V.B.2.a. to operate a tractor sales and repair business

Representing the application: Edward Hewey, general manager of Ken's Tractor & Truck Sales. Scott MacPhail and Jay MacPhail also were present.

Hewey chose to have his application heard on August 18.

Thibault opened the public hearing at 7:08.

Members seated: Keith Thibault, Charles Beauregard, Sr.

Alternates Dierdre Geer (seated for Mitchell), Bryan Rudger (seated for Hutwelker)

Abutters present: none

DISCUSSION

Hewey explained that the business consists of sales of compact diesel tractors, primarily to homeowners, and service of residential and commercial yard care products. The business has been located in a leased building on Route 12 in Troy, and historically has sold between 50 and 60 compact tractors per year.

Hewey proposes the business to occupy the main assembly area of the former MacPhail auction barn. He anticipates that interior modifications will be limited to installing walls to separate display areas from service uses. The building has no existing floor drains, and none will be installed. A fork lift will function as a mechanical lift. Used oil leaves the business in the containers in which it was purchased. A private well and a State-approved septic system serves the building. (The septic system functioned satisfactorily during the building's use as an auction barn.) As established by calculations of square footage during site plan review of the former auction barn, ample room for parking is available.

In an e-mail message, R. Fish (NH-DOT) reports that he has evaluated the existing curb cut, and approves it for the proposed use.

Carbonneau questioned whether the business ultimately might expand to include Sunday hours of operation. Hewey acknowledged the possibility, and amended the proposed hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.; Saturday, 8:00 a.m. to 2:00 p.m.) to include Sunday hours of 8:00 a.m. to 2:00 p.m.

Carbonneau noted that the proposed automotive use triggers the need for ZBA review and said that, at minimum, additional tenants will need Planning Board approval. Currently, the MacPhails use the remainder of the building for storage.

Thibault closed the public hearing at 7:18.

REVIEW OF CRITERIA

Board members reviewed the criteria for granting the requested special exception.

1. Is the exception allowed by the ordinance?

Members agreed in the affirmative.

2. Are specified conditions present under which the exception may be granted?

a. Is the proposed use similar to one or more of the uses already authorized in that District and is it an appropriate location for such use?

Members agreed in the affirmative to both parts of the question.

b. Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood?

Members agreed in the negative.

c. Will there be a nuisance or serious hazard to vehicles or pedestrians?

Members agreed in the negative.

d. Will adequate and appropriate facilities be provided for the operation of the proposed use?

Members agreed in the positive.

MOTION by Beauregard: Having found that the application is allowed by the

ordinance and the specified conditions are present, motion to approve the special exception pursuant to Section V.B.2.a. to operate a tractor sales and repair business at Tax Map 73, Lot 13. Second by Geer. All in favor.

2. PUBLIC HEARING: REQUEST FOR MODIFICATION TO A PREVIOUSLY APPROVED AREA VARIANCE

Applicant: Will and Mary Ryan

Property owners: Will and Mary Ryan

Property location: 129 Westport Village Road Tax Map 88, Lot 1

Zoning District(s): Residence

Request: To modify the hours of operation imposed by the ZBA on March 19, 2007 to include evening hours from 7:00 p.m. to 9:00 p.m. Monday through Friday, and to be permitted to offer art classes.

Ryan chose to have her application heard on August 18.

Thibault opened the public hearing at 7:23.

Members seated: Keith Thibault, Charles Beauregard, Sr.

Alternates Dierdre Geer (seated for Mitchell), Bryan Rudger (seated for Hutwelker)

Representing the application: Mary Ryan. Hana Lowe, a prospective art teacher, and Walter Lowe (faculty, Antioch New England Graduate School) were present to support the application.

Abutters present: none.

DISCUSSION

Ryan proposes to instruct art classes on weekday mornings (for older adults), weekday afternoons (for children aged 5 and up), and from 7:00 to 9:00 p.m. (for adults who are unavailable during the day). Saturday morning lessons will consist of short workshops for various age groups. Ryan will be the primary instructor, and two others may subcontract for a several hours per week.

No changes to the structure or facility are necessary.

Code Enforcement Officer Weston has inspected the site, and calculates that the studio's square footage could accommodate 19 people. Ryan will use pre-registration to control traffic, and many students likely will walk or car-pool to lessons. Ryan has consulted with Swanzey artist Jeanne Thieme, who has conducted lessons as a home occupation for the past eight years. Thieme also uses her enrollment process to regulate traffic, and her home occupation has generated no complaints. All abutters, as well as those neighbors Ryan was able to contact, have expressed their support of the proposal. Ryan provided three pages of signatures indicating support.

Ryan said that the proposal represents a shift of focus from gallery use to studio use, and is proposed in response to consistent public request (from all age groups) and a shifting economy. Ryan has cut back the gallery hours of operation, because foot traffic is mostly limited to weekend tourists and to shoppers who have viewed objects at the web gallery and make appointments to see them in person.

Six parking spaces have been designated for the business, but Weston

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reports that the additional residential parking can accommodate any overflow. Carbonneau recommended that Ryan indicate on a revised site plan 10 spaces for business vehicles.

Carbonneau reminded the Board that the original request for an area variance for a home occupation that exceeds 300 square feet of space was triggered because the barn is attached to the house. Carbonneau said that the proposed instruction – in effect, a service -- is a common and traditional home occupation.

Thibault commended Ryan on the level of preparation of her application materials, her respect for the neighbors, and on how she has integrated the business into the community. He spoke about the Board's responsibility to prepare a complete history of unusual applications. He noted that the Board had considered asking Ryan to apply for a new variance, but ultimately decided that the request for modification was adequate.

The Board discussed potential outcomes should a future owner seek to use the property for another use. Ryan stated that the customized space would be difficult to adapt. Rudgers said that any future use will require Zoning Board approval.

Ryan spoke about the changing demographics of Westport Village, and the greater preponderance of young families. Thibault said that "smart growth" policies call for mixed uses in village centers, and expressed his opinion that towns are well served by dynamic ordinances that allow villages to "de-volve."

Thibault closed the public hearing at 7:58.

MOTION by Rudgers: to approve the modification of hours of operation imposed by the ZBA on March 19, 2007 to now include evening hours from 7:00 p.m. to 9:00 p.m. Monday through Friday, and to permit the offering of art classes, with the condition that business parking be limited to 10 spaces. Second by Beauregard. All in favor.

The following applicants have requested to have their public hearings continued to the ZBA's next regular meeting, on September 15.

3. PUBLIC HEARING: AREA VARIANCE APPLICATION

Applicant: Ronald and Nancy Gocht

Property owner: Ronald and Nancy Gocht

Property location: 46 East Shore Road Tax Map 45, Lot 12

Zoning District(s): Rural/Agricultural; Shorelands Protection

Request: area variances from Sections XI.B.2, XI.C. and XI.C.1 to enable the applicant to expand the existing cottage

4. PUBLIC HEARING: AREA VARIANCE APPLICATION

Applicant: Werner and Ursula Dafeldecker

Property owner: Kevin and Britta Anderston

Property location: off East Shore Road Tax Map 61, Lot 33

Zoning District(s): Rural/Agricultural; Shorelands Protection

Request: area variance from Section IV.A.3 to permit the construction of a storage shed that does not meet the required setbacks from Swanze Lake.

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MOTION by Beauregard to accept requests for continuance from Ronald and Nancy Gocht, and from Werner and Ursula Dafelecker to September 15, 2008, without further notice. Second by Rudgers. All in favor.

ADJOURMENT

Motion by Beauregard to adjourn. Second by Geer. All in favor. The meeting adjourned at 8:03.

Submitted by

Victoria Reck Barlow
Recording Secretary